

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 97-15;
Introduction**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-15. A companion document, the Small Entity Compliance Guide (SECG), *follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: *The FAR Secretariat*, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-15 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Pollution Control and Clean Air and Water	97-033	Linfield
I	Foreign Acquisition (Part 25 Rewrite)	97-024	Linfield
III	Contract Bundling (Interim)	1997-306 (97-306)	De Stefano
IV	Deobligation Authority	99-015	Klein
V	Transition of the Financial Management System Software Program	99-602	Nelson
VI	Document Availability	99-018	Mass
VII	SBA's 8(a) Business Development Program	98-011	Moss
VIII	Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold.	99-304	Moss
IX	Review of Award Fee Determinations (Burnside-Ott)	98-017	De Stefano
X	Nondisplacement of Qualified Workers-Commercial Items	99-600	O'Neill
XI	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97-15 amends the FAR as specified below:

Item I-Pollution Control and Clean Air and Water (FAR Case 97-033)

This final rule amends the FAR to remove Subpart 23.1, Pollution Control and Clear Air and Water: the provision at 52.223-1, Clean Air and Water Certification; and the clause at 52.223-2, Clean Air and Water. This amendment eliminates the burden on offerors to certify that they do not propose to use a facility for performance of the contract that is on the Environmental Protection Agency's (EPA) "List of Violating Facilities." Contracting officers will use the "GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs" (GSA List) to ensure that they do not award contracts to ineligible offerors. Excluded parties whose ineligibility is limited by reason of a Clean Air Act (CAA) or Clean Water Act (CWA) conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation, in

the GSA List. Internet access to the GSA List is available at <http://www.epls.arnet.gov>. These FAR changes do not change long-standing policy that a contracting officer cannot award a contract if performance of the contract would be at a facility convicted of a CAA or CWA violation unless the EPA has certified that the facility has corrected the cause giving rise to the conviction.

Item II-Foreign Acquisition (Part 25 Rewrite) (FAR Case 97-024)

This final rule amends FAR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 25, 36, and 52 to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language.

Item III-Contract Bundling (FAR Case 1997-306) (97-306)

This interim rule amends the FAR to implement Sections 411-417 of the Small Business Reauthorization Act of 1997. Sections 411-417 amend Title 15 of the U.S.C. to define "contract bundling," and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

Item IV-Deobligation Authority (FAR Case 99-015)

This final rule revises FAR 4.804-5 and 42.302 to establish deobligation of

excess funds as one of the contract administration functions normally delegated to the contract administration office. In addition, the rule includes editorial revisions for plain language purposes.

Item V-Transition of the Financial Management System Software Program (FAR Case 99-602)

This final rule amends the FAR to delete Subpart 8.9, Financial Management Systems Software Mandatory Multiple Award Schedules Contracts Program.

Item VI-Document Availability (FAR Case 99-018)

This final rule amends the Federal Acquisition Regulation (FAR) at 11.201(d) and 52.211-2 to update how the public may obtain Department of Defense specifications and standards.

Item VII-SBA's 8(a) Business Development Program (FAR Case 98-011)

The interim rule published as Item III of FAC 97-12 is converted to a final rule without changes. The rule implements changes made in the Small Business Administration's 8(a) Business Development (8(a)BD) Program regulation, contained in 13 CFR Parts 121, 124, and 134, regarding the eligibility procedures for admission to

Attachment 2

the 8(a)BD and contractual assistance programs.

VIII-Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (FAR Case 99-304)

This final rule amends FAR Subpart 13.5 to implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). Section 806 amends Section 4292(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2002, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000.

Item IX-Review of Award Fee Determinations (Burnside-Ott) (FAR Case 98-017)

This final rule amends the Federal Acquisition Regulation (FAR) to implement rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies.

Item X-Nondisplacement of Qualified Workers—Commercial Items (FAR Case 93600)

This final rule amends FAR 52.212-5(c) to add the clause entitled 52.222-50, Nondisplacement of Qualified Workers, to the list of clauses that the contracting officer may incorporate by reference when applicable.

Item XI-Technical Amendments

Amendments are being made at sections 2.101, 5.205, 14.201-6, 15.208, 19.702, 32.503-6, 33.213, 36.104, 42.203, 52.215-1, 52.228-14, and 52.236-25 in order to update references and make editorial changes.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular (FAC) 97-15 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-15 are effective February 25, 2000, except for Items III, VI, VIII, and XI, which are effective December 27, 1999, and Item VII which is effective December 27,

1999. Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: December 20, 1999.

R.D. Kerrins, Jr.,

COL, USA, Acting Director, Defense Procurement.

Dated: December 20, 1999.

J. Les Davison,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: December 16, 1999.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 23, and 52

[FAC 97-1 5; FAR Case 97-033; Item I]

RIN 9000-A119

Federal Acquisition Regulation; Pollution Control and Clean Air and Water

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule that amends the Federal Acquisition Regulation (FAR) to eliminate the burden on offerors to certify that they do not propose to use a facility for the performance of the contract that is ineligible for award because it is on the Environmental Protection Agency's (EPA) "List of Violating Facilities." Contracting officers will use the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs (GSA List) to ensure that they do not award contracts to ineligible offerors. This change represents no change to the longstanding policy that a contracting officer must not award a contract if performance of the contract would be at a facility that has not corrected the cause that gave rise to a

criminal conviction under the Clean Air Act or Clean Water Act.

DATES: *Effective Date:* February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-15, FAR case 97-033.

SUPPLEMENTARY INFORMATION:

A. Background

Section 306 of the Clean Air Act (CAA) (42 U.S.C. 7606) and Section 508 of the Clean Water Act (CWA) (33 U.S.C. 1368) prohibit award of a Federal contract to any person who has been convicted of various violations under the Acts if the convicted person owns, leases, or supervises the facility at which the violations(s) occurred; and any part of the contract will be performed at the violating facility. This ineligibility begins the moment a judgment of conviction is entered. The statutes provide that the ineligibility for contract award remains in effect until the Administrator of the Environmental Protection Agency (EPA) certifies that the conditions giving rise to the conviction have been corrected. Excluded parties whose ineligibility is limited by reason of a CAA or CWA conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation, in the GSA List. Internet access to the GSA List is available at "<http://epls.arnet.gov/>".

The Councils published a proposed rule in the **Federal Register** at 64 FR 26264, May 13, 1999, that explained how the removal of FAR Subpart 23.1, FAR 52.223-1, and FAR 52.223-2 would not have a detrimental effect on the Government's environmental policy or its ability to enforce CAA and CWA requirements that apply to efforts performed under Federal contracts. Four respondents submitted comments concurring with the proposed rule. The Councils have agreed to convert the proposed rule to a final rule without change.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because generally less than 50 facilities a year are ineligible for contract award as a result of convictions for violations of the CAA or CWA.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because these changes remove an information collection requirement approved under OMB Control Number 9000-0021. The paperwork to remove the collection from the FAR inventory will be submitted to OMB.

List of Subjects in 48 CFR Parts 1, 12, 23, and 52

Government procurement.

Dated: December 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 12, 23, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 12, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART I—FEDERAL ACQUISITION REGULATIONS SYSTEM**1.106 [Amended]**

2. In section 1.106, amend the introductory text by removing the word “ten” and adding “10”; and in the table following the introductory paragraph remove FAR segment “52.223-1” and its corresponding OMB Control Number, “9000-0021”.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. In section 12.503, revise the introductory text of paragraph (b); remove paragraph (b)(1); redesignate paragraphs (b)(2) and (b)(3) as (b)(1) and (b)(2), respectively; remove paragraph (b)(4); and redesignate paragraph (b)(5) as (b)(3). The revised text reads as follows:

12.503 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.

* * * * *

(b) Certain requirements of the following laws are not applicable to

executive agency contracts for the acquisition of commercial items:

* * * * *

4. Revise paragraph (b) in section 12.504 to read as follows:

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

* * * * *

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327, et seq., (see Subpart 22.3) are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components.

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PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**23.1 [Removed and Reserved]**

5. Subpart 23.1 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**52.223-1 and 52.223-2 [Reserved]**

6. Sections 52.223-1 and 52.223-2 are removed and reserved.

[FR Doc. 99-33430 Filed 12-23-99; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, and 52**

[FAC 97-15; FAR Case 97-024; Item II]

RIN 9000-AH30

Federal Acquisition Regulation; Foreign Acquisition (Part 25 Rewrite)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language.

DATES: **Effective Date:** February 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501-1757. Please cite FAC 97-15, FAR case 97-024.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 25, 36, and 52 to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language. DoD, GSA, and NASA published a proposed rule in the **Federal Register** on September 28, 1998 (63 FR 51642). Seven respondents submitted comments. The Councils considered all comments in formulation of the final rule. This final rule differs from the proposed rule as follows:

- Deletes the definitions “components” and “construction” (25.003), defines construction in 2.101, and substitutes the definition of “component” (2.101) in 52.225-1 and 52.225-3.
- Deletes the definition “end product” (25.003), defines “end product” (2.101), and substitutes the definition “end product” in 2.101 in the clauses at 52.225-1, 52.225-3, and 52.225-5.
- Revises the definition “U.S.-made end product” to include unmanufactured articles mined or produced in the United States (25.003).
- Deletes the requirement in some circumstances for a written determination of domestic nonavailability (25.103).
- Clarifies the procedures for preaward determinations of inapplicability of the Buy American Act for construction contracts (25.203).
- Clarifies the application of the Trade Agreements Act in acquisitions with limitations on the use of full and open competition in accordance with Part 6 or 13 (6.303-1, 25.401, and 25.408).
- Addresses excluded services under the Trade Agreements Act as well as NAFTA (25.401).
- Clarifies that the procedures at 25.502(c) apply only if the Buy American Act or Balance of Payments Program apply.

LIST OF RULES IN FAC 97-15

Item	Subject	FAR case	Analyst
II	pollution Control and Clean Air and Water	97-033	Linfield
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Pollution Control and Clear Air and Water; the provision at 52.223-1, Clean Air and Water Certification; and the clause at 52.223-2, Clean Air and Water. This amendment eliminates the burden on offerors to certify that they do not propose to use a facility for performance of the contract that is on the Environmental Protection Agency's (EPA) "List of Violating Facilities."

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